

United States v. Tondre, No. 04-50301

DEC 19 2005

SKOPIL, Senior Circuit Judge, concurring in part, dissenting in part:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

As a standard condition of probation, Tondre was not permitted to “possess a firearm or other dangerous weapon.” To the extent he challenges the legality or lawfulness of this original condition, I agree that review is foreclosed. See United States v. Gross, 307 F.3d 1043, 1044 (9th Cir. 2002) (noting a defendant’s challenge to the legality of a term or condition is limited to direct appeal, a § 2255 habeas motion, or a Rule 35(c) motion). There is, however, more to this case. Tondre argued and submitted evidence that he complied with the condition by transferring his firearm to a third party. The district court rejected Tondre’s argument and ordered that he “legally transfer” ownership of the firearm and “provide appropriate documentation” reflecting the transfer. These requirements, whether termed a modification or enforcement of the original condition, were clearly within the district court’s authority and in my view subject to appellate review pursuant to 28 U.S.C. § 1291.

On the merits, I would conclude that the district court did not abuse its discretion in ordering that Tondre comply with the new conditions. See United States v. Miller, 205 F.3d 1098, 1100 (9th Cir. 2000) (noting district courts have broad discretion to alter conditions and terms of supervised release). I agree with

the court's reasoning that the probation officer's unannounced visits to Tondre's house mandates that Tondre provide proof that he legally transferred the firearm. That reasoning is clearly supported by the probation officer's declaration that the requirements are "paramount to ensure officer safety." Accordingly, I would affirm the district court.